



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2003

Ms. Ylise Y. Janssen
Senior School Law Attorney
Austin Independent School District
111 West Sixth Street
Austin, Texas 78703

OR2003-7675

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190034.

The Austin Independent School District (the "district") received a request for three categories of information relating to a named former district employee. You state that you are releasing information responsive to categories one and three of the request. However, you claim that the information responsive to category two, "copies of letters, memos, faxes, e-mails or other correspondence within the past two years sent between district officials - or between district officials and an outside source - that make reference to [the named individual]," is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). By its terms, section 552.108 generally applies only to a law enforcement agency or a prosecutor. However, records that otherwise qualify to be excepted under section 552.108, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Where a non-law-enforcement agency has evidentiary information in its custody, the custodian of such information may withhold the information under section 552.108 if it demonstrates that the information relates to a pending case and provides a representation from the law enforcement entity that it wishes to withhold the information. *See generally* Open Records Decision Nos. 474 (1987), 372 (1983). However,

in this instance, you indicate that you have not provided a law enforcement agency with the submitted documents. You have not indicated that you intend to forward the submitted documents to a law enforcement agency. Further, you have not represented that an investigative or prosecuting agency has requested that this information be withheld from disclosure. Therefore, you have not met your burden in establishing that section 552.108 applies in this instance. Thus, the district may not withhold any information under section 552.108.

We note that the submitted materials contain information which is or may be excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality for this information under section 552.024.¹ If the individuals whose personal information is contained within the submitted records is a licensed peace officer, then the district must withhold this information, which we have marked, under section 552.117(a)(2).

If the individual whose personal information is contained within the submitted records is not a licensed peace officer, the information may be confidential under section 552.117(a)(1) of the Government Code, which excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the district must withhold the personal information for all current or former officials or employees who are not licensed peace officers who elected, prior to the district's receipt of this request, to keep such information confidential. The district may not withhold this information under section 552.117 for such persons who did not make a timely election.

You must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" being the most prominent part.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 190034

Enc: Submitted documents

c: Ms. Michelle M. Martinez
Austin American-Statesman
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Austin, Texas 78727
(w/o enclosures)